

Statement of John W. Keys III
Commissioner, U.S. Bureau of Reclamation
U.S. Department of the Interior
on H.R. 1946
House Resources Subcommittee on Water and Power
April 24, 2002

My name is John Keys. I am Commissioner of the U.S. Bureau of Reclamation. I appreciate the opportunity to provide the Administration's views on H.R. 1946, legislation to require the Secretary of the Interior to construct the Rocky Boy's/North Central Montana Regional Water System, in the State of Montana.

The Administration supports the goal of assuring a safe and reliable water supply for both the reservation and the non-reservation communities in north-central Montana. We recognize that north-central Montana is an historically water-short basin, with water quality and water infrastructure concerns. We understand some of these communities may be facing Safe Drinking Water standard violations. However, the Administration cannot support H.R. 1946, as introduced, because it imposes new responsibilities to provide domestic water both to the Rocky Boy's Reservation, inconsistent with the recent settlement, and to non-Indian communities under provisions that are inconsistent with Administration policy.

In considering H.R. 1946, it is necessary to revisit briefly Public Law 106-163, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act (Settlement Act). The purposes of the Settlement Act are to achieve a "fair, equitable and final settlement of all claims to water rights in the State of Montana for the Chippewa Cree Tribe." The Department has been strong in its support of the Settlement Act and its implementation; Reclamation is authorized to fund \$29 million and the Bureau of Indian Affairs is authorized to fund \$21 million for a total settlement of \$50 million. These monies are for multiple economic and water development activities on the reservation, and include \$15 million for municipal, rural and industrial water needs of the Tribe.

We have numerous concerns with H.R. 1946: first, the "Finding" of section 2(a)(2) -- which states that the United States has a trust responsibility to ensure that adequate and safe water supplies are available to meet the needs of the Reservation. As written, H.R. 1946 indicates that Congress intends to make the United States responsible for providing domestic water systems on the Reservation, including potential liability for money damages if such duty is not met. This commitment could have serious adverse legal consequences with respect to Federal liability.

The Administration also has concerns about (1) the strain on Reclamation's current budget; (2) the inequitable cost share requirement; (3) the potentially perpetual Federal financial and management obligation for both construction and for operating and maintaining the system; and (4) the proposed use of project use power from the Pick Sloan Missouri Basin Program (PSMBP) for non-irrigation purposes. I will submit separately a more detailed analysis of these and related technical issues.

Several provisions in H.R. 1946 are inconsistent with the Settlement Act and Reclamation policy. For example, the Settlement Act recognized a Tribal right to a 10,000 acre-feet per year permanent allocation

from Reclamation's Tiber Reservoir (Lake Elwell), without cost to the Tribe. Thus, under the Settlement Act, costs incurred by the Federal Government for the design and construction of the reservoir are not passed on to the Tribe, nor is an annual operations and maintenance charge assessed, which is otherwise standard procedure under Reclamation Law (via water service and repayment contracts). H.R. 1946 is not clear what the water source would be for the pipeline. Any authorization should provide that the tribal supply will be the 10,000 acre-feet Tiber allocation already held by the Tribe. If future supplies for the non-tribal communities are to come from Tiber water, the beneficiaries should pay their proportionate capital costs for the reservoir and the pipeline, as well as operation and maintenance costs. Across the 17 western states, current municipal & industrial (M&I) beneficiaries at Reclamation reservoirs pay these costs, and with interest.

Two other examples of how H.R. 1946 is inconsistent with the Settlement Act pertain to the extent of federal financial responsibility. Section 201(d) of the Settlement Act states explicitly that "The United States shall have no responsibility or obligation to provide any facility for the transport of water allocated by this section to the Rocky Boy's Reservation or to any other location. Except for the contribution set forth in section 105(a)(3), the cost of developing and delivering the water allocated by this title or any other supplemental water to the Rocky Boy's Reservation shall not be borne by the United States" (emphasis added). In contrast, H.R. 1946 places the total cost of the tribal portion of the system on the United States, including the upsizing necessary to serve the North Central Montana Water Authority.

With regard to the Rocky Boy's Reservation needs, the Settlement Act authorizes \$15 million for the planning, design, construction, operation, maintenance, and replacement of a future water supply system for the Reservation. Sec. 105(a)(3) of the Act states that these funds are "for the total federal contribution" (emphasis added) to such a system. In contrast, H.R. 1946 would authorize the Secretary of the Interior to assist the Chippewa Cree Tribe on the Rocky Boy's Indian Reservation to plan, design, construct, operate, maintain, and replace the Rocky Boy's Rural Water System. In addition, it would authorize federal assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the non-core rural water system off the reservation. The bill would authorize appropriations of at least \$120 million for the *core system* on the Rocky Boy's Indian Reservation (not including the Federal obligation for operations, maintenance and replacement (OM&R)). Further, H.R. 1946 would authorize at least \$60 million for the non-core system that provides water deliveries to areas that are not on the reservation.

Finally, H.R. 1946 contains provisions that replicate activities already required - and underway - under the Settlement Act. Section 203 of the Settlement Act authorizes a regional feasibility study for North Central Montana. Since the rural water project proposed by H.R. 1946 is a smaller portion of the region encompassed by the study, we believe that consideration of H.R. 1946 is premature until the regional feasibility study is final. Further, other Indian water rights settlements in the basin are being negotiated. Until those settlements are concluded, it is not clear what the relative demands and needs of the basin will be. The regional feasibility study to be conducted under section 203 of the Settlement Act will produce a comprehensive analysis of the region's water needs, and will provide Congress with an informed context as it considers legislation on further rural water development in north-central Montana.

Also, Section 202 of the Settlement Act authorized a municipal, rural, and industrial study requiring that multiple alternatives be brought forward at the feasibility level, so all parties to the settlement could make informed decisions. To implement section 202 of the Act, the Tribe released a draft feasibility study in July 2001, and Reclamation is working with the Tribe to complete the study. Reclamation emphasizes that the intent of Section 202 - a thorough evaluation of the feasibility of multiple alternatives - must first be met, so

decision makers can make informed decisions.

Previous efforts to address the water needs of rural communities have taken a piecemeal approach, without a programmatic basis. This has resulted in a number of common problems. The authorized Federal cost-shares have been inequitable, and the authorized Federal obligations for facility operations and maintenance are unsustainable. Additionally, expectations on the part of communities with authorized projects become frustrated because of delays due to inadequate available resources. I suggest a more comprehensive approach. We need to work together - the Administration, the Congress, the States, and the stakeholders - to provide safe drinking water for rural America. We need to identify the appropriate Federal and non-Federal roles in providing this water, to evaluate the appropriate role to be played by the numerous Federal and non-Federal agencies involved with developing municipal, residential, and industrial water in rural and small-town America. This is a priority for me and this Administration. I look forward to working with the Committee and Subcommittee to formulate a programmatic approach to rural water issues.

In conclusion, Mr. Chairman, the Administration believes that H.R. 1946 is premature. However, I would like to reiterate the Department's support for implementing the Rocky Boy's Water Rights Settlement Act as well as our support for finding a way to meet the domestic water supply needs of north-central Montana. As such, we would like to work with Mr. Rehberg and the rest of the Montana delegation, the Committee, the Tribe, and the project sponsors to work through these difficult issues in a manner that addresses the needs of Montana and the interests and concerns of the Department.

This concludes my statement, I would be pleased to answer any questions.

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